

increase users' efficiency and versatility; future innovations, in the more stable regulatory environment created by grant of this petition, will yield greater and greater benefits.

4. *Forbearance would preserve U.S. preeminence in the field.*

Finally, forbearance also would drive continued growth in the U.S. high-tech and communications industry, preserving American preeminence in the field of emerging technologies. Just as American enterprises have been at the forefront of the development and expansion of Internet access and the rapid development of Internet-based applications, so too are they poised to lead with technologies and applications geared toward the convergence of voice and data applications. If the Commission grants this forbearance petition, U.S. Voice-embedded IP enterprises – established companies, small start-ups, research universities, and garage-based entrepreneurs alike – will be able to compete with each other and with foreign competitors, *without* suffering from the disadvantage of regulatory uncertainty and expense.<sup>100</sup>

\* \* \*

For all these reasons, grant of this petition is in the public interest, and therefore the requirements of Section 10(a)(3) are satisfied.

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<sup>100</sup> A corollary to a thriving U.S. Voice-embedded IP application industry is, of course, growth in high-value jobs in that sector. Chairman Powell recently recognized Voice-embedded IP's potential as an engine of job growth. In a letter to Senator Ron Wyden, Chairman Powell applauded the rapid development of Voice-embedded IP service and observed that the expansion of applications creates small business jobs. *See, e.g., Letter from Chairman Michael K. Powell to Senator Ron Wyden (Nov. 5, 2003) (expressing "excitement about the potential for VoIP technology" to bring the benefits of broadband to consumers and businesses) (attached as Exhibit 10).*

**B. Enforcement is Not Necessary to Ensure That Charges or Practices by, for, or in Connection with the PSTN Origination or Termination of Voice-Embedded IP Communications Are Just and Reasonable and Not Unjustly or Unreasonably Discriminatory.**

Enforcement of Section 251(g), the exception clause of Rule 51.701(b)(1), and, where applicable, Rule 69.5(b) is not necessary to ensure that the charges and practices for the exchange of IP-PSTN and incidental PSTN-PSTN Voice-embedded IP communications are just, reasonable, and not unjustly or unreasonably discriminatory; thus, the requirement of Section 10(a)(1) is satisfied.<sup>101</sup> Notably, even in the absence of Section 251(g), the exception clause of Rule 51.701(b)(1) and Rule 69.5(b), there will remain a statutory and regulatory framework to govern intercarrier compensation between the LEC and the telecommunications carrier serving the Voice-embedded IP communications provider – the reciprocal compensation provisions of Section 251(b)(5) and Part 51, Subpart H of the Commission’s rules.

Pursuant to Section 252(d)(2)’s pricing standards, the Act assures that the LEC terminating IP-PSTN or incidental PSTN-PSTN Voice-embedded IP communications will recover the “costs associated with the transport and termination on [that] carrier’s network facilities of calls that originate on the network facilities of the other carrier.”<sup>102</sup> Under the Act, such costs are determined “on the basis of a reasonable approximation of the additional costs of terminating such calls.”<sup>103</sup> The rates for termination are set by the parties in interconnection agreements and, if necessary, through arbitration before state commissions. When the state commission hears an arbitration, it is charged with setting

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<sup>101</sup> 47 U.S.C. § 160(a)(1).

<sup>102</sup> 47 U.S.C. § 252(d)(2)(A)(i).

<sup>103</sup> 47 U.S.C. § 252(d)(2)(A)(ii).

termination rates at a level that is just and reasonable as defined by Section 252 and the Commission's Part 51 pricing rules.<sup>104</sup> Thus, the charges and practices for exchange of traffic from a Voice-embedded IP communication provider's telecommunications carrier service to a terminating LEC pursuant to Section 251(b)(5) will be just and reasonable.

ILECs can be expected to argue that exchanging traffic pursuant to Section 251(b)(5) does not provide them with just and reasonable compensation when an IP-PSTN or incidental PSTN-PSTN Voice-embedded IP communication originates over the ILEC's legacy PSTN network. Nothing in the Act, however, requires that ILECs receive compensation from interconnected carriers when a communication originates over an ILEC's PSTN network. The fact that the existing access charge regime includes origination charges does not alone establish that a rate structure for intercarrier compensation without an origination charge would be unjust and unreasonable. Indeed, with respect to any traffic not included in Rule 51.701(b)(1)'s exception clause, Rule 51.703(b) expressly prohibits a LEC from assessing an origination charge on an interconnected telecommunications carrier to whom the LEC delivers traffic for termination.<sup>105</sup> The incumbent LEC is not denied recovery of any costs it incurs to originate traffic; it simply must turn to its own customer for recovery of those costs rather than to interconnected carriers and the customers of those interconnected carriers.<sup>106</sup>

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<sup>104</sup> See 47 U.S.C. § 252(d)(2).

<sup>105</sup> 47 C.F.R. § 51.703(b); see also Memorandum Opinion and Order, *TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 FCC Rcd. 11166, 11184-85 (¶ 31) (2000).

<sup>106</sup> The Commission has previously required carriers to seek compensation from their own customers rather than interconnected carriers. In the *ISP-Bound Traffic Order*, the Commission, acting pursuant to Section 251(g) and Section 201, required CLECs terminating ISP-bound traffic to recover the cost of terminating this traffic from their ISP customers. See *ISP-Bound Traffic Order* 16 FCC Rcd. at 9181-90 (¶¶ 67-83).

ILECs may argue that they cannot recover origination costs from end-users because of state commission limits on retail end-user prices and FCC limits on the level of the subscriber line charges. These arguments, however, sweep too broadly and ignore regulatory and constitutional safeguards with respect to limits on retail end-user prices. Existing ILEC rates are more than adequate to ensure ILECs have a reasonable opportunity to recover their prudently incurred costs.<sup>107</sup> Even more importantly, however, ILECs generally have other remedies available to them. With respect to interstate subscriber line charge limits, for example, ILECs could, in an appropriate case, petition the Commission for a waiver of such caps, or make an above-band filing under the price cap rules. An ILEC also may seek to initiate new state rates, or to have state or federal retail rate limits set aside as confiscatory takings. For these reasons, the requested forbearance would not result in unjust or unreasonable charges or practices.

Nor would grant of this petition be unreasonably discriminatory. The access charge regime today can hardly be considered part of a coherent system of intercarrier compensation with logically defined boundaries. It is a regime that is clearly and inevitably in a transition, as the Commission has recognized in issuing its *Intercarrier Compensation NPRM*. During this transitional period, while the Commission is formulating a uniform intercarrier compensation regime, it is not unreasonably discriminatory for the Commission to take a class of traffic – IP-PSTN and incidental PSTN-PSTN Voice-embedded IP communications – that today generally is not subject to intrastate or interstate access charges, and to treat that traffic in a uniform manner consistent with making a transition to a uniform intercarrier compensation regime.

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<sup>107</sup> See *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

It is wholly legitimate for the Commission to recognize that it would be difficult, if not impossible, to determine whether specific IP-PSTN traffic begins and ends within the same LEC local calling area, different LEC local calling areas within the same state, or different LEC local calling areas across state lines. The inability to determine the geographic end-points of a Voice-embedded IP communication justifies selecting the only mode of intercarrier compensation – the statutory default of Section 251(b)(5) – that can be applied to all Voice-embedded IP communications regardless of geographic end-point.

Accordingly, the requirements of Section 10(a)(1) are fully satisfied: enforcement of Section 251(g), the exception clause of Rule 51.701(b)(1), and, where applicable, Rule 69.5(b) is not necessary to ensure that rates and practices for the exchange of IP-PSTN and incidental PSTN-PSTN Voice-embedded IP communications are just, reasonable and non-discriminatory.

**C. Enforcement is not necessary for the protection of consumers.**

Enforcement of Section 251(g), Rule 51.701(b)(1), and, where applicable, Rule 69.5(b) with respect to IP-PSTN and incidental PSTN-PSTN Voice-embedded IP communications is also “not necessary for protection of consumers.”<sup>108</sup> The only way that grant of this petition could somehow adversely affect consumers would be if the exclusion of IP-PSTN and incidental PSTN-PSTN Voice-embedded IP communications applications from the access charge regime were to lead to such substantial increases in

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<sup>108</sup> 47 U.S.C. § 160(a)(2). The D.C. Circuit has upheld the Commission’s determination that, as used in this context, “necessary” does not mean “essential” for the achievement of the statutory or regulatory purpose. Rather, “the term ‘necessary’ . . . mean[s] that there must be strong connection between what the agency does by way of regulation and what the agency permissibly seeks to achieve with that regulation.” *Cellular Telecoms. & Internet Ass’n v. FCC*, 330 F.3d 502, 504 (D.C. Cir. 2003).

end-user rates that those rates became unaffordable and subject to wide discrepancies between urban and rural areas, and the FCC and state commissions then refused to address such discrepancies through statutorily authorized universal service mechanism.<sup>109</sup> There is absolutely no evidence to suggest that these consequences will arise, and, in any event, the Commission and state commissions will refrain from exercising their full statutory authority pursuant to Section 254 to address any such result. Imposing access charges on IP-PSTN and incidental PSTN-PSTN Voice-embedded IP communications traffic (which, as noted above, is generally not subject to interstate or intrastate access charges today) is wholly unnecessary to protect the future of universal service.

Although access charges historically provided implicit support for basic local telephone service in rural and high cost areas, grant of this petition will not – as some ILECs are likely to suggest – lead to the demise of universal, affordable, and reasonably comparable telephone service in rural and high-cost areas. In the first instance, the IP-PSTN and incidental PSTN-PSTN Voice-embedded IP traffic will not increase quickly enough to present any significant near-term threat to the flow of funds under the existing access charge mechanisms. IP-PSTN traffic requires by definition that only one end-user migrate to receiving voice communications over an IP device.

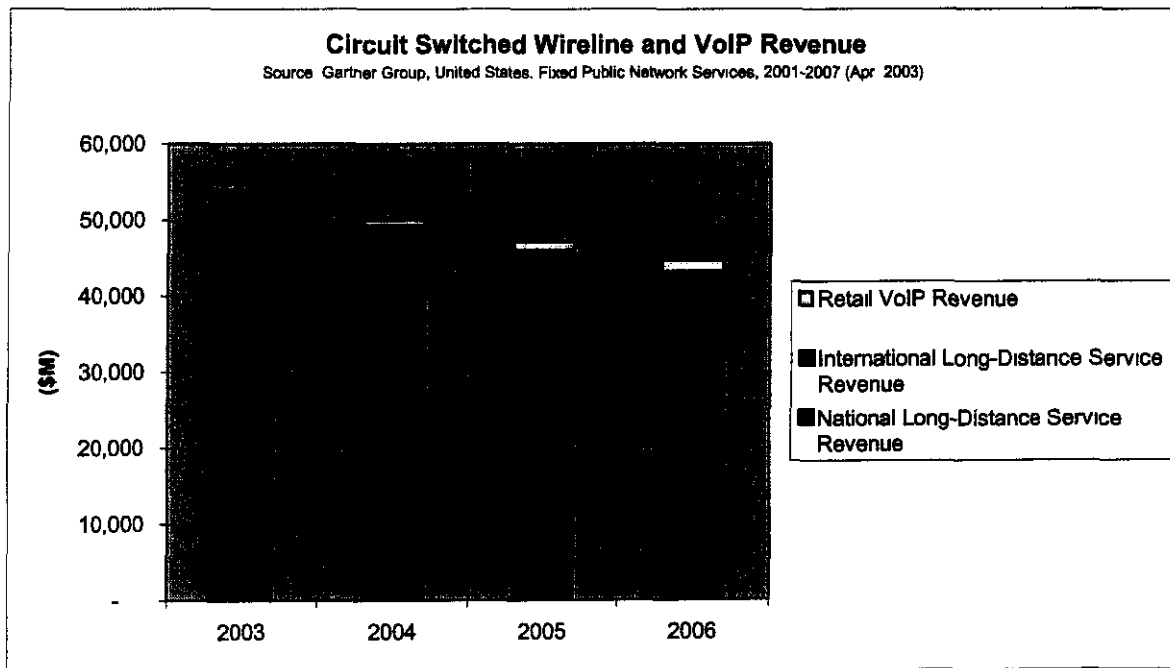
While some business and residential users are migrating to IP-based communications for at least some of their voice communications, their numbers are still relatively small and, as the chart presented below demonstrates, unlikely to have a significant impact on PSTN revenues in the near term. As illustrated in Chart 1, below, the Gartner Group has projected that Voice-embedded IP communications, measured by

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<sup>109</sup> See 47 U.S.C. § 254(e)-(f).

revenue, will constitute a mere 4% of circuit-switched national and international U.S. long distance revenues in 2006.<sup>110</sup> Many – perhaps even a substantial majority – of the end-users and traffic constituting this eventual 4% share in 2006 will be users and traffic that is incremental to, rather than in substitution for, circuit-switched traffic. The additional features and functionalities available through Voice-embedded IP that are not available from circuit-switched offerings will create new demand. There is, therefore, no objective basis for any assertion that grant of this petition will lead to such significant and rapid changes in the flow of access charges so as to disrupt universal, affordable, and reasonably comparable telephone services.

Chart 1<sup>111</sup>



<sup>110</sup> See Gartner Group, United States: Fixed Public Network Services, 2001-2007 (Apr. 2003).

<sup>111</sup> While the chart only compares circuit-switched long distance revenues with Voice-embedded IP, Voice-embedded IP includes communications that, in traditional terms, are local as well as long distance.

Moreover, any argument that grant of this petition will disrupt implicit support flows necessary to universal service ignores the fact that this Commission has been removing implicit universal service support from interstate access charges. (Likewise, many state commissions have removed implicit universal service support from intrastate access charges.) Through the *CALLS Order* and *MAG Order*, the Commission shifted over \$1 billion from implicit access charge-based support to explicit federal universal service funding.<sup>112</sup> By increasing SLCs, those orders also eliminated billions of dollars of implicit subsidies that were not necessary to maintain affordable and reasonably comparable end-user rates. Furthermore, the Commission recently issued its *Tenth Circuit Remand Order*, in which it took additional steps to make certain that states receive sufficient federal universal service funding to ensure that end-user rates in “non-rural” study areas remain reasonably comparable to nationwide averages.<sup>113</sup>

In addition, the access charges preserved by the exception clause of Rule 51.701(b)(1) and Section 251(g) cannot lawfully be considered necessary for the protection of consumers because of purported effects on access-based implicit subsidies. Section 254(e) requires all interstate universal service support to be “explicit.”<sup>114</sup> The

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<sup>112</sup> *CALLS Order* 15 FCC Rcd. at 12974-76 (¶¶ 30-32) (“The *CALLS Proposal* identifies and removes \$650 million of implicit universal service support.”); *MAG Order*, 16 FCC Rcd. 19613. See also Universal Service Administrative Company, First Quarter 2004 FCC Filing, Appendix HC01, “High Cost Support Projected by State by Study Area” (quantifying the *MAG Order*’s Interstate Common Line Support at \$114,936,678 per quarter, which amounts to \$459,746,712 per year).

<sup>113</sup> Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service*, FCC 03-249, 2003 FCC LEXIS 5892 (rel. Oct. 27, 2003) (hereinafter “*Tenth Circuit Remand Order*”). “Non-rural” study areas are those in which the ILEC is not a “Rural Telephone Company” as defined in Section 3(37) of the Act, 47 U.S.C. § 153(37). There are many areas that are rural in character within these “non-rural” study areas. See *id.* ¶ 1 n.1.

<sup>114</sup> 47 U.S.C. § 254(e).



United States Court of Appeals for the Fifth Circuit, in its *TOPUC I* and *Comsat* decisions, has made very clear that “the plain language of § 254(e) does not permit the FCC to maintain *any* implicit subsidies.”<sup>115</sup> To the extent that any implicit support for universal service remains buried within interstate access charges, those charges “countermand[] Congress’s clear legislative directive . . . that universal service support must be explicit.”<sup>116</sup>

To the extent that intrastate switched access rates retain implicit support for universal service, such support also is not “necessary” to support universal service. Section 254(f) of the Act grants state commissions the authority to establish state universal service funds.<sup>117</sup> Although the Commission has held that Section 254(f) does not require states to make universal service support within intrastate access charges explicit,<sup>118</sup> many states have, at least to some extent, adopted state universal service funds that supplement the federal universal service fund.<sup>119</sup> To the extent states have not done so, or have not done so completely, the states commissions failure to address implicit universal service subsidies in a straightforward and competitively neutral manner nearly eight years after enactment of the 1996 Act does not justify foisting uneconomic

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<sup>115</sup> *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999) (hereinafter “*TOPUC I*”) (emphasis in original); see also *Comsat Corp. v. FCC*, 250 F.3d 931, 938 (5th Cir. 2001) (hereinafter “*Comsat*”). Under *TOPUC I* and *Comsat*, it would be unlawful for the Commission to extend access charges to IP-PSTN and incidental PSTN-PSTN Voice-embedded IP communications traffic in order to preserve implicit subsidies in switched access charges.

<sup>116</sup> *Comsat*, 250 F.3d at 938.

<sup>117</sup> 47 U.S.C. § 254(f).

<sup>118</sup> See *Tenth Circuit Remand Order*, 2003 FCC Lexis 5892, \*39-40 (¶ 26).

<sup>119</sup> United States General Accounting Office, *Telecommunications: Federal and State Universal Service Programs and challenges to Funding*, GAO-02-187, at 12-17 (Feb. 4, 2002).

intrastate access charges on carriers serving IP communications providers. State inaction after eight years cannot render subsidy-laden intrastate access charges “necessary” to the protection of consumers. States have alternatives, and they must use them.

Finally, imposition of access charges on Voice-embedded IP services is not necessary to ensure that the providers (and users) of such services contribute to universal service. To the extent the providers or users of such services purchase telecommunications services or private carriage telecommunications from third parties for a fee, in many cases, those providers or users already contribute to universal service. Some Voice-embedded IP is provided via facilities that do not today contribute to universal service, such as cable modem facilities. To the extent the Commission were to conclude that it is desirable to collect universal service contribution with respect to such facilities, the Commission is considering separately whether those services should be required to contribute to universal service directly and explicitly.<sup>120</sup> Moreover, the Commission is currently considering other changes to the methodology for collecting universal service contributions, such as connection-based or telephone number-based mechanisms, that could more adequately – and both technically and on a competitively neutral basis – extract universal service contributions from facilities used to provide Voice-embedded IP services.<sup>121</sup>

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<sup>120</sup> See Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, 17 FCC Rcd. 3019, 3048-56 (¶¶ 65-83) (2002).

<sup>121</sup> See Report and Order and Second Further Notice of Proposed Rulemaking, *In the Matter of Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review-Streamlined Contributor Reporting Requirements Associated with Administration*

Accordingly, the exception clause of Rule 51.710(b) and Section 251(g), as it pertains to receipt of switched-access charges for origination or termination of IP-PSTN and incidental PSTN-PSTN Voice-embedded IP communications, is not “necessary for the protection of consumers.” The statutory forbearance requirement in Section 10(a)(2) is therefore satisfied.

#### IV. CONCLUSION.

The Commission must grant this petition for forbearance because, as demonstrated above, each of the three statutory criteria is satisfied in this case: forbearance is in the public interest (Section 10(a)(3)); the regulations and statutory provisions from which forbearance is sought are not necessary to ensure that rates and practices are just and reasonable or not unjustly or unreasonably discriminatory (Section 10(a)(1)); and the regulations and statutory provisions from which forbearance is sought are not necessary for the protection of consumers (Section 10(a)(2)). Forbearance is therefore mandatory under Section 10(a), which states that “the Commission shall forbear” when each of the three criteria is satisfied.<sup>122</sup>

The Commission should forbear without delay. By so doing, the Commission will not only ensure that IP communications and the next wave of truly innovative

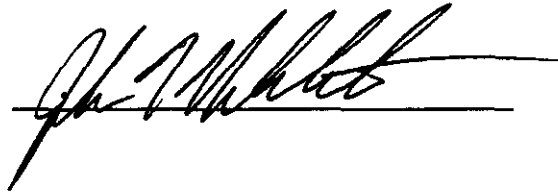
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*of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, 17 FCC Rcd. 24952 (¶¶ 66-100) (2002). Level 3 was a member of the Coalition for Sustainable Universal Service, which proposed a connection-based assessment mechanism.

<sup>122</sup> 47 U.S.C. § 160(a).

applications develop quickly and without the unnecessary shackles of intrastate and interstate access charges, but also benefit the country and economy as a whole. "It's incumbent on us to identify good policy going forward and not just shoehorn [Voice-embedded IP] into statutory terms or regulatory pigeonholes without adequate justification," stated Commissioner Michael J. Copps at the Commission's forum on Voice over Internet Protocol. "It's no slam-dunk that the old rules even apply."<sup>123</sup>

Respectfully submitted,



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*Counsel to Level 3 Communications LLC*

December 23, 2003

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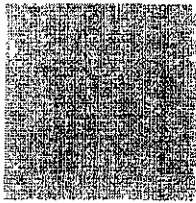
<sup>123</sup> Opening Remarks of Michael J. Copps, FCC Voice Over Internet Protocol Forum (Dec. 1, 2003), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-241765A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-241765A1.pdf) (last visited Dec. 19, 2003).





## Kudlow & Cramer

11/19/2003 11:00 PM (EDT)



**Jim:** I'm Jim Cramer.

**Larry:** I'm Larry Kudlow,

**Larry:** We're going to talk about the change for cell phone users. If you live in the top 100 metropolitan areas you can cancel your land line phone and transfer the number to your cell phone, allowing the switch from a wireless carrier to another. This is an expansion of an earlier ruling that allowed consumers to keep a wireless number while changing to another wireless carrier. And with us to discuss the phone number portability is **FCC Chairman Michael Powell**.

Welcome back to "Kudlow & Cramer".

There will be a huge consumer choice and price competition. What was your thinking behind this when you elected to go down this road?

**Powell:** You answered the question. Two enormous benefits: consumer choice and competition. Not being able to move a number was a barrier to being able to make choices. It was harder to switch. People are invested in the number, and that was a difficulty. Consequently for competition, carriers will have to compete more aggressively to keep you [the consumer], because it is easier to walk if you [the consumer] are not satisfied with the quality of service.

**Larry:** Some say switching rates for switching from carrier to another, already at -- 30%, 40% -- could go as high as 50%. Are you at all concerned about price deflation among carriers and the weak sector for a while?

**Powell:** I think there are concerns there. But I think the beauty is that it will be made up with innovation, and they [carriers] are thinking more creatively about what can be done with that wireless phone. Like with the wireless phone and wireless phone number, you [consumers] can come home and plug it into a cradle

and have all your home phones work. That's creating values and services and perhaps charging more. But, there is a lot of motivation there.

**Jim:** When you decided this, did anyone think of property law? In the sense, Mr. Powell, who owns your phone number, do they [the carriers] own it or do you [the consumer] own it.

**Powell:** That is a good question. Many thought that it was owned by the phone company, but they are numbers managed by the government for the purpose of the people, and when you see this, we are treating it as it as your number, you take it with you -- it is your ownership interest.

**Jim:** Is there other phone companies arguing, trying to get a judge to say they own the number and therefore your ruling is invalid?

**Powell:** I don't know if that will be the claim, I have been around long enough to know that nobody will let good competition go unpunished, they will be in court trying to keep us from doing it. We are prepared for the fight and ultimately it will be a service that will go into affect.

**Larry:** And, there is another issue related to all of this. That is voice over Internet telephony. You have made statements about what sounds like your opposition to state and local regulatory and tax burdens, can you expand on that please?

**Powell:** One thing that people need to come to grips with is that all communications are going IP, all communications are going to be over the Internet. The Internet is an interstate and global medium. With all due respect to state regulatory bodies, we cannot bastardize the nature of the service just to serve local regulatory service. The service is interstate in nature. There are dangers of accidental regulation in 51 jurisdictions over the most vibrant innovation to come to the American and global economy in decades and in centuries even.

**Jim:** Are you getting flak over this ... flak from governors? A lot of governors want to tax the Internet, they want to tax telephony, they just want to tax. Are you hearing much -- shall we say "blow back" from that one?

**Powell:** We are seeing "blow back," about Internet taxation on the Hill, states have legitimate concerns here. I don't intend to minimize their concerns but this is a very burgeoning and fantastic technology, and a lot of governors do not understand or grasp it. Whatever loss you will find in local revenue, will be made up for in jobs, economic stimulus, productivity ... and by the way, what's our choice? Every one of these

guys can move to Europe, set up a server there and move the jobs and the opportunity to another jurisdiction; we will keep the jobs in America by providing a regulatory environment for them.

**Larry:** Let's go back to something said earlier. We have a industry, somewhat on the ropes. There was a time not long ago when WorldCom wanted to merge with Sprint and that would have been too much concentration. Are we now in a world where even the entrenched incumbents are so weak that agencies would no longer frown upon major mergers of the remaining players?

**Powell:** I can say, from my perspective, restructuring is a healthy thing. There is point at which a competitive market is too concentrated. But that is a natural response in the market to not enough revenue, to people competing for too few customers, and I think this market still needs to go through restructuring over time as the new innovations are challenging existing business models.

**Larry:** What do you say to an incumbent like Verizon -- talking about the drug stocks -- if I was a shareholder of Verizon, Bell South, SBC, I would be saying, wait a second -- Vonage and 8 x 8 -- these are companies that that are using this loophole, they're data companies! We're stuck with voice. They are really competitors.

**Powell:** I don't think it is a "loop hole", they [Vonage and 8 X 8] are taking advantage of the future, and I thin there is real possibilities for the incumbents to take advantage too. The network they have is of enormous value, they reach, 94%, 95%, 96% of homes in America. It is for them to succeed and capitalize on. They have a challenge. They are sort of stuck with having to protect their legacy systems as well as moving themselves into the future. 8 x 8 and Vonage, have no legacy to protect, they're free to run without that restriction. That's the biggest challenge for incumbents, they have to protect their existing investments and make dramatic changes in the future.

**Jim:** Speaking of broadcasting -- G.E., Disney, and Viacom are still very much interested in media ownership deregulation. We have Senator Ted Stevens already vetoing President Bush on this point. Can you bring us up-to-date on where that is?

**Powell:** Interestingly enough, not much has happened in many months despite the noise on this. We were expecting to have attempts to roll back many of he rules. There are six of them and right now, just one is in play. The national cap that affects the companies you mention. There is a lot of trouble with the appropriations bill that it was put on. So we will roll it up and develop a big omnibus spending bill and -- as you know -- who knows, what comes out of the smoking room before this is all over.



**Jim:** You're building a legacy of a free market, pro-consumer, pro-choice and pro-competition for the FCC in this burgeoning world of Internet telephony and so forth.

**Powell:** Absolutely. I think that the FCC vision is to be about the technology and communications of tomorrow and not let the communications and policies of yesterday restrict that. Every time there is a life-style changing, new fantastic technology we are going to do everything in our power to bring it in for consumer choice and competition.

**Larry:** That's great. I know we were talking earlier about how our kids understand, how the younger generations recognize, the power of Yahoo!, Google. Older generations may not.

Thanks for coming into our studios.

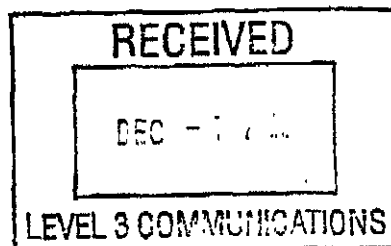
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November 19, 2003

Level 3 Communications LLC  
Jennifer McMann  
Director Regulatory Affairs  
1025 Eldorado Blvd  
Broomfield, VA 80021



Dear Jennifer McMann:

~~As you may know, there has been considerable public attention surrounding the artificial traffic~~  
routing schemes used by some carriers to avoid lawful access charges. The purpose of this letter  
is to notify you that SBC Telephone Companies (SBC) expects your company to meet its  
obligations under its SBC Interconnection Agreements and applicable SBC switched access  
tariffs relating to the routing, identification, reporting and compensation of long distance traffic.  
You have the ultimate responsibility to properly route and report the jurisdictional nature of your  
traffic, including the transmission of accurate signaling information to ensure compliance with  
your interconnection agreements and applicable tariffs, and to ensure that terminating carriers are  
properly compensated for the services they provide.

The existing SBC switched access charge tariffs remain the applicable terms and conditions for  
long distance traffic you deliver to SBC for termination regardless of the method of transmission.  
All long distance traffic should be transmitted with accurate signaling information and generally  
should be routed over Feature Group D trunks to apply appropriate tariffed switched access  
rates, terms and conditions ensuring carrier parity and tariff compliance. In addition, calls routed  
via Voice over Internet Protocol ("VoIP") and similar IP telephony services that are handed to  
SBC's telephone network are subject to switched access charges where the end user originating  
the call is physically located outside of the local calling area of the physical location of the called  
party. Accordingly, SBC also expects each carrier to appropriately route such traffic over Feature  
Group D trunks and to pay switched access charges on any such traffic that is transmitted or  
terminated over the SBC network. SBC reserves all its rights to back-bill and recover any  
damages that it may have incurred or continues to incur to the extent it is determined that your  
company has misrouted, mislabeled and/or mis-billed traffic.

Please contact your assigned Account Manager should you have questions or require further  
information.

Sincerely,

Notices Manager  
Contract Management



**Chairman Michael K. Powell**  
**Address to Academic and Telecom Industry Leaders**  
**at the University of California (UCSD)**

December 9, 2003

(available at [http://www.fcc.gov/commissioners/powell/mkp\\_speeches\\_2003.html](http://www.fcc.gov/commissioners/powell/mkp_speeches_2003.html))

**Excerpts from Unofficial Transcript**

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Q. Behind every rule there's a vested interest at some point. One of the questions that many people out here ask is what would be the realities of laying out a plan of reform? That is, if you take a look at the latest proposal for rulemaking out of the Commission, it emphasizes the idea of test beds in certain areas of spectrum, where it's not on the main highway. It's more in the areas of satellite links and other fixed microwave. Will the reforms that you are talking about eventually migrate into the heart of the traffic of the wireless world, into the main bands of commercial use, or is it likely to be that people here should be designing all of their innovative devices really for the side roads of the wireless spectrum?

A. That's a great question because now I get to use my military training. My view is that this is about guerilla warfare. . . . One way to approach long and sustained change is to allow things to take root and blossom before the government comes and finds it. And when you do that you really do get tangible examples of the value of the innovation. For six years there have been things I've been really excited about, and when you talk about them, people think you're just some egg-headed academic because they've never heard of what you're talking about.

This Commission was talking about Voice over IP eight years ago, and people were saying this is just some excuse to deregulate the big guy. Until you get a world where you can see, taste, and smell it, and you can go to a Senator and say this isn't something my pal is making up, I'm going to your district and introduce you to your constituent who is doing this, I'm going to take you to rural America and show you what a wireless internet service provider really is, using WiFi technology to bring broadband to rural consumers, so that you understand this is not something we're making up, and the world starts to crumble a little bit. And I do think that one of our approaches to the free radicals is to really first of all try to make sure they're not going to blow up the whole world, but we try to let them flourish and innovate because it also helps us by providing tangible examples, real examples that help inform the bigger debate. Those won't come from the large incumbents usually, not because they're bad but because it's a [unclear] dilemma; they're always trapped by their legacy position, and while they will always use something, that's not where you're looking to get the most cutting-edge example of what the world will look like tomorrow.

And so we're putting a lot more energy in that sort of leading edge set of companies and technologies because the FCC is a mass market regulatory operation. I'm not a venture capitalist, it's not just I'm going to bet on this little company and that's going to make policy pay off. Our policies always have to be directed to a mass-market phenomenon. We're trying to maximize the public interest for the nation. So I would submit to you anything you see us doing that looks incremental on the edge, trust me, it's all about bringing it to the mat. It may be a tactical judgment of what we can achieve now.

For example, I have never fought so hard for something in my life as I've fought for ultra wideband to get commercialized over the objections of the Defense Department, over the objections of a lot of people who had very deep concerns about this stuff, some established providers, incumbents who would have loved to see that technology get killed and in its grave or kept out of the competitive sphere. And I can tell you right now honestly we did not provide as much ability to the market as I want, but I think the foothold is invaluable, and what will happen is that the theoretical spheres will begin to be demonstrated as exaggerated, people will learn to coexist, and it's a beachhead that we will keep driving on and expanding over time.

And sometimes while incrementalism is a bad word, sometimes in politics, particularly policy, where you have to bring this heavy rearward legacy with you, those are very important ways to make change happen. I've learned that the grand unification theory of policy doesn't work, and I can sit around and write a 40-page paper about how we've changed the whole regulatory world and 40 years from now we'll all be laughing about how nothing's happened. You have to fight these little insurgents in incremental ways, and they will come back. And I tell my guys: it's like planting dynamite charges: you don't have to blow up the whole bridge, you can put one charge on the right span and it will come down, and that's what I think a lot about. Is Voice over IP the thing if put on the right span is going to bring this thing down in a way that is constructive? Is WiFi? Is ultra wide band? And that's the way we think about it. It looks little sometimes at the start, but when you extrapolate, you realize this is huge. If this is right, the whole thing's coming down.

- Q. One of the things I would like to see the FCC and policy people do is recognize that universities are becoming kind of hothouses for the effects you are mentioning and in fact our institute was really brought about to kind of help organize on a larger scale these kind of what I call "living in the future laboratories." For instance, one of our professors, Bill Griswold, worked with a number of industrial partners to get about 1,000 students, undergraduates, living with WiFi-enabled pocket PCs with spatial location. So that when they're doing instant messaging they now have Geo buddies so they actually not just allow other people to know when they're on the internet and then they can chat with each other, but they let them know where they are physically in space. And you

look on your pocket PC, and you see the student union and the various places, and then you see your friends that you've allowed to do this, and of course you have to protect your privacy by you being the person who decides whether somebody else knows your position or not. And then this begins to change social interaction, and if you have a thousand of these then you can really begin to get a sense of how the mass market might respond. We had that going at the same time as, because QualCom is one of our partners, we were able to get what has now just been rolled out October 1st commercially, three years ago. We had the antenna for this high band width wireless up on top of the engineering building here, and so we were able to experiment with living in that broadband everywhere. And we, for instance, realized that you could take the WiFi access point and instead of plugging a fixed internet into it, you can just use the cellular internet as the back haul. And this meant we could put it in our shuttle buses and so created cyber-shuttles, and this was a whole new use for WiFi that hadn't been thought about because the commercial introduction of broadband cellular was three years in the future.

It's sort of a playful world, and you have the young people, who are the least encumbered with prior ideas, able to go in there and interpret the world. But I don't see many people who study policy thinking of universities this way. They think of them as writing research papers or doing deep work on our Center for Wireless Communications, not so much as living laboratories. Is the federal government thinking about working more creatively with universities?

- A. I wish I could represent the whole federal government, but you know they say Washington is a company town and sometimes it acts just like one, which is that it is very focused on the quarterly results. And it could get very, very focused on short-term issues. And here's a dirty secret: politics is usually about incumbent vested interest, not the future. You know, I could name any number of policy debates today, and you will realize it's not about the future. And so, there tends to be a kind of a myopic problem, and I think technology is even more difficult that way, first of all, for lots of reasons – a lot of it's on this coast and more on that coast and us lawyers who flunked out of math don't necessarily get it, who seem to dominate policymaking. But I agree with you 100%.

You know, I first in – in about 1998, I touched on this realization when Business Week, which I think does it on an annual basis, you know, once a year would go to the top computer labs in the world, and they would say we do this every ten years and we could see the next ten years and in this are the trends. That kind of attitude is what lead us to really start realizing that while we may be an alphabet soup agency in Washington and a classic bureaucracy, we will not be relevant if we don't plug into the future and the technologies tomorrow with the communities and the institutions that are playing with them. And that's what we've done. When I took over, about 45% of my engineers at the FCC were three years from retirement and we had 370 million lawyers – now I'm a lawyer, and I

was still scared. And I knew just because of my obsession with the internet revolution and technology, I knew we can't make relevant policy.

I remember doing the AOL-Time Warner merger as a young Commissioner and knowing I had a big problem when Bill Gates has to teach the Commission what the technology is at the same time he's advocating something he wants it to do or Steve Case is. And I realize just like law, technology can be advocated. If you don't have an independent capability to be able to ask hard questions and let them know, "don't "b-s" me, I can see through a lot of this," you're not going to be a credible institution so we immediately worked hard to turn it around. We hired more engineers at the FCC in the year than it had hired in four years. We hired like 45 engineers the first year I was Chairman, and we gave them an engineering excellence program. We created an FCC university program that runs 365 days a year internally. We bring in outside professors, outside labs and we make our employees constantly learn and train on technology so that they stay current in their field.

When I was a Commissioner, and I wish I could do it more as Chairman, I had a rule: we go on a field trip once a quarter. And that's what this is. This is my field trip for the year because I know that if you don't come out here and meet the people and go to the labs and meet the entrepreneurs, you are just kidding yourself that you know what's happening. The last thing I'll say about it is with a caution. It isn't my job to figure out what those things are. It's not my job to facilitate our understanding of innovation. It is my job to create a world in which you get to do this without worry that we will crush your innovation, or dampen your enthusiasm, or steal your entrepreneurial spirit, or burden it unnecessarily with cost to take you away from ingenuity. That's what I do for you. One day I hope maybe I'll get to be in a cool world that's thinking of this stuff too, but part of that is that regulatory humility. This is not the space for the government to take over; this is the space for the government to let the American spirit take over. I think that's really important.

And the last thing I would say is the most important individuals in telecommunications policy right now are my 14- and 9-year-olds. I watch them constantly because I know that I am watching the first real digital generation. These are not the kids who started with typewriters and are migrating. These are kids who don't know what a record is. I have had very sad moments in my house when my 14-year-old found my record collection and didn't know what they were. . . . There's a whole world being taught to us by watching our children, and they are just a short number of years from being tomorrow's adults.

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- Q. One of the things the U.S. has going for it is we have 50 states which are cauldrons of innovation and have different ways of going at things. You're seeing individual states begin to take initiative to try to speed up, . . . to get a gigabit to



the home by the end of the decade. Many states are now going out and buying the fiber for 20 years and operating it . . . . What do you see the relationship between the FCC as a federal agency providing a uniform set of rules for all 50 states versus this freedom to innovate and try to move ahead?

- A. Clearly, federalism is a wonderful thing to one extent, and we get experimentation and innovation when you have parallel systems of sovereigns. And I think they're a good thing. But cauldrons of innovation are also cauldrons of regulatory hell. I think that founding fathers created an interstate commerce clause for a reason sometimes. Sometimes you have be very conscious of the fact that the nature of a service is so international or national or global in character that to let 51 jurisdictions bite at it differently is a formula for catastrophe. It reminds me of the old – I think it was Ben Franklin – where the old snake of the colonies is cut into pieces. You know, unite or die. You know, I often think of the internet. I don't know if you could cut it into 51 different pieces and expect it to prosper, just like you couldn't an airline system, or an interstate railroad system, or an interstate trucking system, or environmental protection laws to a limit. Some things laugh at the artificial jurisdictional boundaries that we lawyers create to organize policy and politics, but technologies have no interest with.

The internet, if anything, is, in everyone's first glowing paragraph, "an end-to-end global network." If that's what the internet is, God help us if regulatory and policy makers and politicians want to try to shove the round internet in square regulatory pegs for its own sovereign convenience. I think this happens a lot. You ask, what are the real motives for certain regulatory efforts? And are they really about empowering the development, or are they about revenue collection, or various other things? It's an important question. I think there's a lot of experimentation. I believe that principally the internet is going to be an inherently national, principally national framework out of necessity. It's just sheer reality. There are no internet entrepreneurs who are doing generally purely local inside today's borders plays, because if you are you are not really taking advantage of the power that the internet is itself. You're doing something very different from what the upside is. Federalism can be messy. That'll be a challenge for the government to do for a very long time.

The other thing I would say is I think these efforts are great, and some them we're real big fans of, but let me tell you another thing: Remember that the problem with government is always the same – it doesn't move fast. We've wired a lot of schools in America with internet to the classrooms and I think it's one of the great programs that the government can be very proud of. I worry that we missed wireless while we were doing it. If you did this today, you would not wire high school classrooms the way we have invested in wiring them now. You would WiFi every one of them, you would bring one pipe into the room and you would have saved massive national expenditures on tearing up walls, pounding through infrastructure, digging out trenches. But do you think that the government program is going to rebuild anytime soon? In some ways when the government